Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551
regs.comments@federalreserve.gov

Re: Docket No. R-1336
Interim Rule Amending Regulation Z: *Summary Information Regarding Interest Rates and Payment Changes* (75 F.R. 58470-58489)

Dear Ms. Johnson:

The American Bankers Association,[1] the Consumer Mortgage Coalition,[2] and the Mortgage Bankers Association[3] (hereafter "the Lender Associations") appreciate this opportunity to comment on the Federal Reserve Board's Interim Final Rule (Rule) amending Regulation Z, the Truth- In- Lending Regulations, to implement certain requirements of the Mortgage Disclosure Improvement Act (MDIA), which amended the Truth in Lending Act (TILA). The Rule will require creditors extending mortgage credit to disclose information to consumers about interest rate and payment changes that may occur on their loans, and to disclose to consumers they are not guaranteed the ability to refinance their transactions in the future.

While the Lender Associations strongly support improvement in the disclosure process for consumers, we do not believe that the disclosures under the Rule should be mandatory on January 30, 2011, as set forth in the Rule. Implementation of these requirements will be costly, and for some lenders, impossible by that date. Various regulatory clarifications are still needed regarding the application of these new rules to a variety of loan products. The recently-amended Real Estate Settlement Procedures Act rules (RESPA Rules) already require disclosure of information comparable to the information the Rule requires. A strong commitment by the Consumer Financial Protection Bureau (Bureau) to integrate RESPA and TILA disclosures on a priority basis very well may require revisions to these disclosures. For all of these reasons, we respectfully urge that Implementation of these requirements be deemed voluntary on January 30, 2011. The Board should advise that as of that date, compliance with the new RESPA rules is sufficient pending a decision whether this rulemaking should go forward as a result of the

---

[1] The American Bankers Association represents banks of all sizes and charters and is the voice for the nation's $13 trillion
[2] The Consumer Mortgage Coalition is a trade association of national consumer mortgage lenders, servicers, and service providers.
[3] The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 280,000 people in virtually every community in the country. Its membership of over 2,200 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, Wall Street conduits, life insurance companies and others in the mortgage lending field. For additional information, visit MBA's Web site: www.mortgagebankers.org.

Bureau's effort to integrate RESPA and TILA disclosures. If the Board is determined to move forward, it still should delay mandatory implementation, assuming RESPA compliance, until the issues identified here are resolved and sufficient time is provided for lenders to comply.

Background:

On September 24, 2010, the Board published in the Federal Register an interim final rule changing Regulation Z to implement certain provisions of MDIA. The Board earlier amended Regulation Z to implement MDIA's other provisions amending TILA that require new timing requirements for transaction-specific TILA disclosures.[4] The timing requirements were implemented by the Board in 2009.[5] This rule would implement the requirements for a disclosure of payment examples if a mortgage loan's interest rate or payment can change. Specifically, the rule requires that creditors that extend credit secured by real property or a dwelling for such loans must disclose information about interest rates and payment changes in tabular form. The interest rate and payment summary tables replace the payment schedule previously required. Finally, the rule adds a statement informing consumers that they are not guaranteed to be able to refinance their loans in the future.

The Board states that it is issuing an interim rule, rather than a final rule, because it intends to conduct additional testing of this and other disclosure requirements, and may revise these interim provisions further in light of further testing results.

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank)[6] was signed by the President on July 21, 2010. On August 2, 2010, the Treasury Secretary announced that combining and streamlining RESPA and TILA disclosures is a priority. On September 21, 2010, Treasury Secretary Geithner and Assistant to the President and Special Adviser to the Treasury Secretary Elizabeth Warren convened a Mortgage Disclosure Forum for this purpose. The Dodd-Frank Act requires a proposal combining the mortgage disclosures within one year after the designated transfer date.[7]

---

[4] MDIA requires transaction-specific TILA disclosures to be provided within three business days after an application is received and before the consumer has paid a fee, other than a fee for obtaining the consumer's credit history. In addition, the MDIA requires creditors to mail or deliver early TILA disclosures at least seven business days before consummation and provide corrected disclosures if the disclosed annual percentage rate changes in excess of a specified tolerance. The consumer must receive the corrected disclosures no later than three business days before consummation. The MDIA also expanded coverage of the early disclosure requirement to include loans secured by a dwelling even when it is not the consumer's principal dwelling.

[5] 74 F.R. 23289 (May 19, 2009)

[6] Pub. L. No. 111-203, 124 Stat. 1376.

[7] Dodd-Frank Act § 1032(f), 124 Stat. at 2007-08.

Summary of Lender Associations' Comments:

The Lender Associations have long supported reforms to improve mortgage disclosures for the benefit of consumers. We believe that clear information on mortgage terms, including rate and payment adjustments, is crucial information that must be presented to the consumer before the consumer commits to a loan. Nevertheless, the Lender Associations have serious concerns with the very short period for implementation of this regulation. The Rule was officially published on September 24, 2010, and it requires that creditors implement the new mortgage loan disclosures by January 30, 2011.

The Lender Associations respectfully request reconsideration of this timeline considering that— (1) compliance will be costly and for some lenders, impossible to implement by January; (2) Regulation X already requires information comparable to the information the Rule requires in its new disclosures of information on rate and payment changes that are required by the Rule; (3) further changes to disclosure requirements are anticipated as a result of the Bureau's priority effort to improve mortgage disclosures; and (4) a number of specific regulatory issues should be addressed before compliance is mandatory.

The Lender Associations therefore ask that the Board treat compliance with the RESPA requirements as sufficient to satisfy MDIA requirements, or alternatively, that the Board extend the implementation period until the issues raised here are resolved.

The Lender Associations believe that the current legislative and regulatory environment requires coordination and careful synchronization. The enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010[8] has dramatically changed the regulatory landscape. This legislation is intended to usher in a new era of stronger, coordinated regulation in which streamlined and simplified rules ensure transparency and promote fair competition.

To achieve this objective, the Lender Associations believe that federal banking agencies must work with the Bureau to develop a comprehensive plan for disclosure reform that includes an agenda and timetable to propose, finalize and implement <u>all</u> mortgage disclosure revisions by the Board and the Bureau and other agencies in an orderly manner. The Lender Associations believe the Board should consider this rulemaking effort in light of that broader mortgage reform effort, and minimize the addition of repetitive forms and rulemakings in favor of a more comprehensive approach.

Need to Coordinate Regulatory Reforms

The Lender Associations have expressed in the attached letter (Attachment A), and continue to express here, that there is an urgent need for a far more orderly and coordinated approach to the ongoing regulatory changes applied to the mortgage lending industry. The disparate and piecemeal regulatory

[8] Pub. L. 111-203, 124 STAT. 1373 (2010) *to be codified at* 12 U.S.C. §5301 *et seq.*

changes so far have yielded complex, confusing, and even conflicting requirements, and very considerable costs that threaten the availability of sound housing finance options going forward.

During the past two years, lenders have been subject to 50 new regulations, and Dodd-Frank mandates the issuance of at least 263 more regulations over the next several years, many within a year or two.[9] These initiatives have stretched compliance capabilities thin, and greatly increase compliance and operating costs. Community bankers tell us that the regulatory compliance burden is reaching the point where many are seriously questioning the viability of the community bank business model, and all banks report that they are analyzing the continued feasibility of particular products and services, particularly in mortgage lending. The many initiatives also are straining the abilities of stakeholders to appropriately review and respond to proposals.

The industry already is having difficulty integrating recent changes to regulatory requirements under TILA, RESPA, Fair Lending, and mortgage-related state laws. Even when rulemakings are deemed "closed" by regulators, our members still must deal with a host of unintended consequences and technical concerns.

The Lender Associations believe that the changes under this rule are major, and will require significant resources to implement. Moreover, we are advised that loan origination technology systems cannot be modified as quickly as the Rule's timeframes for implementation would impose. The technology systems that ensure proper compliance with regulations and that generate the disclosures are integrated rather than isolated; one change, regardless of how limited, affects other processes and results, and if not properly instituted produces considerable difficulties across product lines.

These realities demand a much greater level of coordination among all agencies and under all laws that focus on mortgage lending procedures. Moreover, to prevent unintended consequences as regulations and changes are added, lenders must be afforded a reasonable implementation framework where systems changes can be undertaken carefully and in rational order.

Going forward, the Lender Associations stress that the only reasonable approach to proper reform is to establish the broader RESPA -TILA integration process mandated under the Dodd-Frank Act as a first priority because that effort will best improve disclosures and help consumer understand their mortgage loans. All other changes and regulatory improvements to the disclosure process must be deferred to ensure that further modifications complement the RESPA-TILA integration effort and do not merely add undue burden and confusion.

---

[9] *See* ABA Rulemaking Dates Chart *available at*http://www.ABA.com/ABA/documents/RegReform/Rulemaking.pdf *See also* CRS Report R41380, The Dodd-Frank Wall Street Reform and Consumer Protection Act: Regulations to be Issued by the Consumer Financial Protection Bureau, by Curtis W. Copeland, at 3 (August 25, 2010)("By one count, the legislation mentions a total of 243 'rulemakings'... Others have placed the number of rules expected to be issued pursuant to the act even higher.").

As explained by the August 2, 2010 speech of Secretary of the Treasury Timothy Geithner at New York University's Stern School of Business:

> [W]e will not simply layer new rules on top of old, outdated ones. Everyone that is part of the financial system – the regulated and regulators – knows that we have accumulated layers of rules that can be overwhelming, and these failures of regulation were in some ways as appalling as the failures produced where regulation was absent. So alongside our efforts to strengthen and improve protections for the economy, we will eliminate rules that did not work. Wherever possible, we will streamline and simplify.[10]

The efforts of individual agencies, including the Board's effort to improve TILA disclosures, should be rescheduled to later in the reform process in order to avoid diverting the attention of stakeholders and confusing or confounding the RESPA-TILA integration effort itself. For these reasons, the Lender Associations repeat the request made in concert with other financial trade associations urging the Board and others to coordinate with the new Bureau to defer intermediate mortgage-related rulemaking until it can be incorporated into a more comprehensive, and coordinated approach. (See Attachment A.)

We believe the aspiration of a truly improved pro-consumer mortgage delivery system can only be achieved through such an approach.

RESPA Rules Already Require the Disclosures the MDIA Requires

The Rule implements an MDIA provision that requires the following in connection with loans on which the interest rate or required payment amount can adjust. The MDIA requires:

> (i) Label the payment schedule as follows: 'Payment Schedule: Payments Will Vary Based on Interest Rate Changes'.
> (ii) State in conspicuous type size and format examples of adjustments to the regular required payment on the extension of credit based on the change in the interest rates specified by the contract for such extension of credit. Among the examples required to be provided under this clause is an example that reflects the maximum payment amount of the regular required payments on the extension of credit, based on the maximum interest rate allowed under the contract, in accordance with the rules of the Board.[11]

The MDIA further requires that, prior to issuing implementing rules, the Board must conduct consumer testing to determine the appropriate format for these disclosures.[12]

---

[10] Timothy F. Geithner, U.S. Secretary of the Treasury, Remarks at New York University's Stern School of Business (Aug. 2, 2010), *available at* http://www.treasury.gov/press/releases/tg808.htm.
[11] MDIA § 2502(a)(6), codified at 15 U.S.C. § 1638(b)(2)(C).
[12] *Id.*

Provisions of the new RESPA Rule require disclosures that, while not identical, are comparable to the information the Rule requires. Notably, these new RESPA disclosures were instituted following the enactment of MDIA, and they have already implemented the Congressional intent behind the Board's Rule.[13]

RESPA and its implementing Regulation X require, within three days of a loan application, delivery of a GFE that discloses loan terms and estimated settlement costs. The GFE must disclose the interest rate for fixed rate loans. For loans in which the interest rate or payment may change, the GFE is also required to disclose maximum rate and payment examples that meet the MDIA requirements.

In a box entitled "Summary of Your Loan" on the first page of the new required GFE, originators must provide a consumers a summary of loan terms and escrow account information in a visible way for easy consumer access. This is provided in a question and answer format. The new box shows for the loan covered by the GFE:

- *Initial loan amount:* the principal amount of the loan on the closing date.
- *Initial interest rate,* the interest rate applicable on the closing date.
- *Initial monthly amount owed,* for principal, interest, and mortgage insurance.
- *Can your interest rate rise?:* Whether the interest rate can rise, and if so, the maximum rate to which it can rise over the life of the loan.
- *The first change will be in:* the period of time after which the interest rate can first change.

In short, the GFE already discloses whether the interest rate can rise. If it can, it discloses the maximum possible rate, the date on which the rate may first change, how frequently the rate can change, the amount by which the rate may change on every "change date," the life-of-loan interest rate floor, and the life-of-loan interest rate cap. These disclosures are also included in the new RESPA settlement statement.

The GFE also discloses whether the payment can change, either because of an adjustable rate or for reasons other than an adjustable interest rate. The GFE discloses whether the required payment amount for principal, for interest, or for mortgage insurance can increase even if the borrower makes timely payments. If so, the GFE must disclose when the required payment amount can first change, the most it may increase to on that date, and the most it can increase during the life of the loan.

In addition, the RESPA Settlement Costs Booklet that consumers receive pre-consummation includes the disclosure that "When faced with 'payment shock,' you may discover too late that the loan payments no longer fit within your budget and that the loan is difficult to refinance. **You may then be in danger of losing your home.**" Accordingly, the MDIA requirements for all intents and purposes have already been implemented under RESPA.

---

[13] The RESPA Rule was published on November 17, 2008, at 73 Fed. Reg. 68204.

The GFE was issued based on extensive consumer testing, and therefore satisfies the MDIA requirement that consumer testing be conducted.[14] While the agency that conducted the testing was not the Board, both agencies' RESPA and TILA functions will be consolidated into the Bureau under Dodd-Frank, rendering this difference, if it ever had meaning, irrelevant.

For these reasons, providing the required RESPA disclosures should be deemed to meet the MDIA requirements for providing maximum rate and payment examples. This would be consistent with other provisions of TILA and Regulation Z, which incorporate RESPA requirements. For example, footnote 40 of Regulation Z permits creditors to substitute the GFE for the itemization of amount financed.[15] Permitting creditors to substitute the GFE for the Interest Rate and Payment Summary would provide consumers with the information required by the MDIA, and would do so through an existing format that has been in use for close to one full year.

Comments on Specific Elements of Proposal

The Lender Associations appreciate the Board's regulatory work on this rule and the explanations provided in the Rule's preamble. Lender Associations believe, however, that there are several elements of the rule that are unclear, necessitating clarification and delay of the rule's implementation pending further guidance from the Board.

The most serious concern is that the Rule fails to properly clarify how its requirements including the model forms will apply to the full range of products that lenders offer in today's market. Nor does the Rule appear to be sufficiently flexible to accommodate future product innovations that are sure to emerge in the marketplace going forward.

Some examples of products and/or terms that do not fit within the current model forms are—

- Loans with bi-weekly payments
- Construction loans and construction-to-permanent loans
- Fixed-rate loans with adjustable or graduated payment features
- Interest-only ARMs where the rate may adjust to maximum before end of the interest-only period (*further described below*)
- Loans where the amount of the discount is greater than interest rate cap that will apply at first adjustment (*further described below*)

The Lender Associations believe that this deficiency in addressing the full range of possible products is, in itself, of sufficient weight to necessitate a delayed implementation of the Board's proposal pending the provision of guidance. In light of regulators' very stringent approach to regulatory compliance under TILA and the risks of private litigation in this area, lenders will not risk even slight deviations from

---

[14] "The revised GFE form in today's rule is the result of an iterative testing process, comprised of six rounds of consumer testing of the form during the period 2003 through 2007. An additional round of testing was conducted in the summer of 2008." 73 Fed. Reg. 68204, 68225 (November 17, 2008).

[15] 12 C.F.R. § 226.18(c)(1).

regulatory instructions and the examples set forth in *Appendix H*. The absence of instructions may stop lenders from offering certain products—such as biweekly loans—disadvantaging consumers without reason.

Additional technical implementation items are as follows:

- The number of columns required is in many cases unclear as we describe below, making implementation of the Rule in some cases not possible.

- For interest-only ARMs whose rates may adjust to the maximum interest rate before the end of the interest only period, the Rule does not provide for a column in any disclosure to show the maximum payment that will result at the time the first principal and interest payment is due. The Rule should require a column showing the maximum payment. The Rule should also require different column headings to clearly distinguish between the column showing the first time the maximum rate may be reached and the column showing the first time the maximum payment may be reached.

  Note: The preamble at 75 Fed. Reg. 58475-58476 indicates that section 226.18(s)(2)(i)(C) applies to an adjustable rate interest-only loan and requires that when the scheduled payment increase does not coincide with a scheduled interest rate adjustment the creditor must—(1) include a column that discloses the interest rate that will apply at the time of payment increase, and (2) describe that column as "first increase" or "first adjustment." This instruction, however, reflects the incorrect assumption that the first principal and interest payment will be due on or before the first rate adjustment. Moreover, as drafted, section 226.18(s)(2)(i)(C) only applies to "payment increases as described in paragraph (s)(3)(i)(B)," and because that paragraph only applies to loans where "all periodic payments will be applied to accrued interest and principal" it does not appear that it covers interest-only loans. Section 226.18(s) (3)(ii), which describes how to disclose interest only payments, does not appear to independently require a separate column when the first principal and interest payment is due. It merely refers back to the interest rates required to be disclosed under 226.18(s)(2)(i).

- The Lender Associations believe the Board should publish a model form adapted specifically for interest-only ARMs. Such model clause should resolve the issues addressed in this comment.

- Further clarifications also are needed to explain the Rule's application to certain loan programs (e.g. 10-year interest-only) where the first adjustment occurs independent of an interest rate increase and does not occur until after the maximum rate is reached, which would therefore be reflected in the third column. In such instances, a fourth column will be required. However, with a 7-year interest-only ARM, the first adjustment occurs prior to the time the maximum rate is reached, in which the third and fourth columns should be reversed.

- The Rule at section 226.18(s)(2)(iii) and Comment 18(s)(2)(iii)(B)-1 concerning the "place in sequence" disclosure assume that when the initial rate is discounted, it will adjust to the fully indexed rate at the first adjustment. This assumption is not accurate if the amount of the discount is greater than the interest rate cap that will apply at the first adjustment. As an example, assume that a loan's initial rate is fixed for the first three years and will adjust annually thereafter and each adjustment is subject to a 2 percent interest rate cap. In this example, the initial rate of 2 percent is discounted by 4 percent from the fully-indexed rate of 6 percent. In this case, the loan has a discounted introductory rate of 2 percent that ends after three years. In the fourth year, even if market rates do not change, this rate will increase to 4 percent (which is not the fully-indexed rate). In the fifth year (which is not the place in sequence from the expiration of the introductory rate), even if market rates do not change, this rate will increase to 6 percent. Introductory Rate Model Clause H-4(I) does not accommodate showing that it will take more than one adjustment to reach the fully-indexed rate.

- On some interest-only loans, the date of the first principal and interest payment will be one month after the date that the rate adjusts to a rate disclosed in the maximum interest rate in the first five years column or the maximum rate ever column. In this situation there is a direct conflict in the provisions of the Rule as to whether the date shown in the column should be the date that the rate changes or the date one month later when the corresponding monthly principal and interest payment is due. Section 226.18(s)(2)(B) indicates that the date of the rate change should be shown in the column while section 226.18(s)(3)(ii)(B) indicates that the date that the payment is due should be shown.

- Comment 18(s)(2)(i)(B)-2 states that the maximum interest rate during first five years column need not be shown if an ARM has no interest rate cap other than the maximum rate cap. The comment should further state that this column is also not necessary if there is no rate adjustment during the first five years or if the rate may increase to the maximum rate ever at the first adjustment. In these situations providing a five year column would be confusing. When there is no adjustment during the first five years, the introductory rate and monthly payment column already will show that the introductory rate will be in effect for five years or more. When the loan's first adjustment will occur within the first five years, but no rate cap other than the maximum rate cap will apply to that adjustment, the introductory rate and monthly payment column will show the introductory rate remaining in effect until the first adjustment and the maximum ever column will show that the loan may reach the maximum rate ever within the first five years of the loan, on the date of the first adjustment.

- The Rule is not at all clear how specific the dates shown in the columns must be. Must creditors show the day, month, and year? Or must they show the month and year, or perhaps just the year? We note that the Rule does not provide completed examples, but the August 2009 proposal had some examples with just the year filled in. This fact creates uncertainty regarding what the provision requires.

- In instances where escrow and/or mortgage insurance is not collected by the lender on a loan, it is not clear whether the "Estimated Taxes + Insurance (Escrow)" row and the bullet point on mortgage insurance should appear. There should be a clear demarcation whether such items are required to be disclosed, as well as guidance distinguishing the disclosures to be made for circumstances in which such charges are payable by the borrower, but are not collected into escrow by the lender.

- The Rule mandates that private mortgage insurance (PMI) be disclosed whether or not there are escrows. On some loans, there in fact may be PMI, but no required escrow or impound for taxes and insurance. Because the format of the model forms cannot be changed, creditors will be forced to provide a disclosure that implies that the value disclosed is for taxes, insurance plus PMI, instead of disclosing that the value is for PMI alone. Lender Associations believe this would be inaccurate and misleading. Borrowers may be confused that, contrary to their agreement with the creditor, they will have an escrow for taxes and insurance, which may not be the case.

  Creditors should have the flexibility to delete references to PMI, or alternatively, include only a reference to PMI, or to fill in the model tables with textual explanations (e.g., "no escrows collected") that will clarify what is being charged. As the appendix currently reads, the PMI language is in brackets, but there is nothing in the Rule to indicate that that language can be omitted if it is inapplicable, and the Rule appears to require the description to refer to taxes and insurance, even if those items are not escrowed.

- Reference to PMI was omitted from the model clauses H-4(G) and (H). Nonetheless, PMI must be disclosed if it is applicable to the loan. We wonder why the reference would be included in other model clauses but not in loans covered by H-4(G) and (H). See above, some loans will have only PMI and will not have escrows for taxes and insurance. In such instances, the model clause will refer to the amount that must be disclosed for PMI as "for estimated taxes and insurance," which is inaccurate.

- The word "private" in reference to mortgage insurance seems unnecessary and should not be included. The intent of the Rule is to inform consumers clearly about the costs of their mortgage credit, while not immersing them in technical details about the secondary mortgage market.

- Comment 18(s)–1 clarifies that a disclosure that does not include the shading shown in a model clause but otherwise follows the model clause's headings and format is substantially similar to that model clause and does not, therefore, affect the clear and conspicuous standard. The Board should make clear that certain other changes do not affect clear and conspicuous presentation of form, and do not constitute changes to format. In particular, the Board should make similar explicit statements with regard to capitalization of terms, and the necessity of including vertical and/or horizontal lines in the table.

- There is no clear indication regarding whether the disclosures mandated by the Rule are "material disclosures" within the meaning of TILA section 103(u). Considering the implications of whether a disclosure is "material," Lender Associations request clarity on this point.

- The introductory language to the model forms provides that certain changes to the format or content of the forms and clauses in general is permitted and that inapplicable disclosures can be deleted. The Board states, however, that (1) changes to the model forms and samples in certain G and H appendices may not be made, and that (2) changes to the model clauses in H-4(E), H-4(F), H-4(G) and H-4(H) may not be made. It is unclear how these instructions are to be interpreted or applied to specific circumstances.

- Lender Associations also request that the Board provide further clarity to affirm the following points:
  - The APR, Finance Charge and Total of Payments disclosures will continue to be calculated using the same assumptions as they are for the current payment schedule and disclosures, notwithstanding the fact that the payment schedule will no longer be disclosed.
  - As long as the length of the first payment period falls within the minor irregularities rule in section 226.17(c)(4), then a rate or payment increase occurring on the date of the 60th monthly payment need not be reflected in the disclosure of the maximum rate and corresponding payment during the first five years after consummation.
  - Mortgage insurance premiums need to be calculated in two ways, just like the interest and principal payments for the loan. For the interest rate and payment summary, a "worse case" amortization schedule should be used. For the mortgage insurance premiums included in the APR, Finance Charge and Total of Payments disclosures, the amortization schedule used for the current payment schedule should continue to be used.
  - Creditors will not be subject to civil liability or extended rights to cancel for failure to provide the payment schedule disclosure.

The Lender Associations believe that these various outstanding issues—especially those concerning the failure of the model forms to cover certain loans that are being made—must be addressed before the Board makes compliance compulsory. As discussed, compliance with the rule should be optional and compliance with the RESPA regulations should be deemed acceptable until the RESPA-TILA integration effort is completed and these technical questions are addressed. Further, appropriate time must be afforded to lenders for proper compliance.

Systems Problems

The new disclosures mandated by the Rule are not "generic" forms in the sense that they cannot be simply printed and distributed to consumers. To the contrary, these forms require mathematical calculations that must be tailored to the specific product offered and its specific terms. This fact raises significant implementation concerns for lenders.

As the Board is aware, most lenders use mortgage disclosures that are electronically generated to ensure full compliance and accurate calculations and to maintain data security standards. The systems that produce these disclosures generally cover all mortgage products in an institution, and are commonly linked to most (if not all) loan programs offered by the lender. These systems are integrated, and take into account federal and state compliance requirements, investor requirements, and lender-rules or best practices. These systems cannot, therefore, be tweaked without disrupting other portions of the system. In short, every change, no matter how small, has system-wide ramifications that must be managed, tested, and fixed.

A large number of lenders also depend on compliance technology products sold by third-party vendors, meaning that every regulatory change must first be embedded in technology and then purchased by the lender. Lenders must then incorporate the technology into their existing systems. In implementing such changes, lenders and information technology departments must have all changes identified and submitted far in advance of an effective date. The integration process is complex, and requires various rounds of testing and assessment before it can be considered complete.

The Lender Associations respectfully submit that the systems to handle the product-specific disclosures mandated by the Rule cannot be adequately constructed, tested and also finalized within the 4-month time frame that the Board is imposing. In preparation for these comments, Lender Associations inquired of various private technology providers, and the majority indicated that they were "still working on the changes" and that they would have them ready for distribution to lenders "by December." Some informed us that they will have to continue with testing and trouble-shooting well after the date of final implementation. Quite clearly, the tight time-frames imposed by this rule will not allow lenders sufficient time to properly integrate changes into their systems.

These concerns are multiplied exponentially by the fact that there are so many outstanding regulatory issues that must still be clarified by the Board. In the meantime, to ensure compliance, our members will have to make systems changes based on assumptions or "best guesses" regarding what the Rule intends, or what the Board will eventually decide. If the Board's eventual decisions on these items are contrary to such assumptions, the systems will have to undergo a new cycle of changes and upgrades at considerable cost ultimately borne by consumers.

We urge that the Board take note of these difficulties, and urge that there be a delay in the effective date of this rulemaking. Compliance with the HUD RESPA Rule is sufficient for an interim period. As set forth above, the optimal approach is to suspend all mortgage-related rulemakings until they complement rather than contradict RESPA-TILA integration. Absent that, we must recommend that the effective date of this rule be postponed, compliance made voluntary until at least 6 months after the Board issues all clarifying regulations in final form.

Mandatory Compliance with the Provisions of this Rule by January 30, 2011 Is Not Necessary

The Lender Associations understand that the Board believes that it is bound by legislative mandate that these changes are to be effective within the time frames specified in the Rule. Section 2502(c)(1) and (c)(2) of MDIA state that these amendments must be made effective 30 months after the date of enactment or July 30, 2008. Through the Rule's preamble, the Board concludes that those provisions require the MDIA Rule to become effective on January 30, 2011, or any earlier compliance date established by the Board.

There are, however, options available in this case which would afford a more orderly approach to compliance.

- *RESPA Rules Already Require Disclosures Comparable to the MDIA Disclosures*

As indicated above, the new RESPA requirements are comparable to and should be regarded as satisfying the MDIA requirements implemented by this rule. Accordingly, the Lender Associations believe the Board should provide, in transactions subject to RESPA, that the RESPA disclosures are deemed to meet the MDIA requirements for providing maximum rate and payment examples. Such an exemption would be entirely consistent with prior precedent, where Regulation Z incorporates RESPA requirements to minimize useless disclosure. (As indicated, footnote 40 of Regulation Z permits creditors to substitute the GFE for the itemization of amount financed.[16]) In order to cover mobile home lending and other similar transactions that may not be subject to RESPA, the Fed's regulation should state that for those transactions not covered by Regulation X, the requirements of MDIA would be met by providing consumers a disclosure that complies with the provision listed in Appendix C to 24 C.F.R. 3500, entitled "Summary of Your Loan."

At minimum, the Board could adopt this approach on a temporary basis, and specifically state that the RESPA disclosures will fulfill the MDIA requirements until the Board and/or the new Consumer Protection Bureau act to merge RESPA-TILA disclosures and these provisions can complement that effort. Given that the GFE disclosures overlap and repeat the MDIA requirements, and given the extraordinary difficulty, or the impossibility, of complying with the Rule by January 30, 2011, the Lender Associations believe the enormous cost and potential exposure to creditors for failure to meet the January 30, 2011 compliance date outweighs any possible benefit of providing consumers with a repetitious disclosure differing in form but not substance from RESPA disclosures.

- *Board Authority to Extend Compliance Dates*

The Rule expresses the legal basis for the January 30, 2011 compliance date, and the Board states that the MDIA requires the effective date for the new disclosures to be no later than January 30, 2011. The Board also believes that the effective date for the specific disclosures that the MDIA requires override

[16] 12 C.F.R. § 226.18(c)(1).

TILA section 105(d), which normally requires changed disclosure requirements to "have an effective date of that October 1 which follows by at least six months the date of promulgation[.]"

The Lender Associations respectfully suggest, however, that this statement overlooks other applicable provisions and ignores important discretionary powers afforded to it. In particular, the Truth-In-Lending Act states that the Board "may exempt ... any class of transactions ... for which, in the determination of the Board, coverage under all or part of this title does not provide a meaningful benefit to consumers in the form of useful information or protection."[17] In making this determination, the Board is to consider, among other elements, the "extent to which the requirements of this title complicate, hinder or make more expensive the credit process for the class of transactions."[18]

We point out that the Board has construed its authority under section 105 to be extremely expansive. The Board relies on the view that Congress gave the Board broad authority to make adjustments to TILA requirements based on its "knowledge and understanding of evolving credit practices" and consumer disclosures, and for purposes of "facilitating compliance."[19] The Board also has used this authority as the sole basis to propose very transformative changes to the TILA law, including amendments to the definition of "finance charge," revisions to what constitutes a "material disclosure," broad changes to format rules, modifications to timing rules under the right of rescission, new rules regarding fee refunds, new definitions for what constitutes "loan modification," and many others. The Board would not therefore depart from practice by providing needed compliance margins for proper implementation of this Rule.

The Lender Associations would urge the Board to exercise its statutory authority considering the exceptional circumstances surrounding this rulemaking. Congress, in enacting the MDIA, intended to improve consumer disclosures and did not intend to require the industry to unduly burden the use of the technology systems that ensure the disclosures are suitably produced.

Conclusion

In summary, the Lender Associations respectfully urge that Implementation of these requirements be voluntary on January 30, 2010. We urge the Board to advise that as of that date, compliance with the new RESPA rules satisfies the interest rate and payment change disclosures mandated by this Rule. Such provision should remain effective until it is determined how the Rule will complement the Bureau's effort to integrate RESPA and TILA disclosures. If, however, the Board is determined to move forward, it still should delay mandatory implementation, where there is RESPA compliance, until the issues identified here are resolved and sufficient time is provided for lenders to comply.

[17] 15 U.S.C. § 1604(f)(1).

[18] 15 U.S.C. § 1604(f)(2)(B).

[19] See 75 Fed. Reg. 58539, at 58544, 58545, and 58554.

We appreciate the opportunity to comment and we would also appreciate the opportunity to discuss these comments in greater detail. If you have any questions or desire more information, please contact any of the undersigned, or Rod J. Alba at ralba@aba.com.

Sincerely,

Robert R. Davis
Executive Vice President
Mortgage Markets, Financial Management and Public Policy
American Bankers Association

Anne C. Canfield
Executive Director
Consumer Mortgage Coalition

Stephen A. O'Connor
Senior Vice President
Public Policy and Industry Relations
Mortgage Bankers Association

November 10, 2010

The Honorable Timothy F. Geithner
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

The Honorable Shaun Donovan
Secretary
U.S. Department of Housing and Urban Development
451 Seventh Street, SW
Washington, DC 20410

The Honorable Ben Bernanke
Chairman
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Dear Secretary Geithner, Secretary Donovan and Chairman Bernanke:

The undersigned trade associations, representing the real estate finance industry, appreciate the Board's and HUD's efforts to improve disclosures to mortgage borrowers under the Truth in Lending Act (TILA) and Real Estate Settlement Procedures Act (RESPA). At this point, however, Special Advisor to the President Elizabeth Warren and Treasury staff have begun discussions internally and with stakeholders to combine the two disclosures into a single, integrated disclosure, and we understand that effort will be a first priority of the new Bureau of Consumer Financial Protection (Bureau).

Every segment of the financial services industry shares the objective of doing something "exceptional" to improve the mortgage disclosure process for consumers and we fully support this important work. Both disclosures are provided to borrowers throughout the mortgage process and integrating them will greatly increase transparency and consumer understanding of the mortgage transaction.

Notwithstanding, it is important to recognize that this vital initiative is being undertaken in the midst of a surfeit of proposed and final regulations that require fundamental changes to the mortgage finance business model and a generation of systems which support it.

Major changes under TILA, including HOEPA revisions, and new loan officer compensation rules, along with new RESPA disclosures, SAFE Act compliance and appraisal standards, to name a few, have stretched thin the compliance capabilities of financial institutions. If these efforts are not coordinated going forward, the cumulative regulatory burden will threaten the availability of housing finance options.

Likewise, these initiatives have stretched the abilities of stakeholders to consider proposals and provide needed input. The numerous rules recently issued by the Board and other agencies are listed in Attachment A. Many more are to come under the Dodd-Frank Wall Street Reform and Consumer Protection Act (DFA).

Accordingly, while we believe disclosure improvement should be the first priority, considering these other imperatives and the need to assure energies are directed to this important effort, we believe it is essential that all federal regulatory efforts to establish new mortgage disclosure requirements under RESPA and TILA and DFA be accomplished in an orderly and coordinated manner.

To this end, we urge you to work with Professor Warren, and subsequently the Bureau Director, to develop a comprehensive plan for disclosure reform that includes an agenda and timetable to propose, finalize and implement <u>all</u> mortgage disclosure revisions by the Board, Bureau and other agencies in an orderly manner.

The plan should establish RESPA-TILA integration as a first priority and assure that other rules to improve mortgage disclosures complement that effort. ***Accordingly, we believe efforts of individual agencies, including the Board's to improve TILA disclosures, at this point should be rescheduled to later in the process, to avoid diverting the efforts of stakeholders into what may become a fruitless pursuit and/or confusing the joint RESPA-TILA simplification effort itself.*** Moreover, to maximize public involvement, we believe the plan should be made public so stakeholders can appropriately allocate their resources.

Integration of RESPA and TILA Disclosures Should Indeed Be the First Priority

Our industry knows too well that consumers are inundated with countless ill-timed, uncoordinated and confusing disclosures during the mortgage process, which, as a result, are often ignored despite their importance. Both independent and governmental studies confirm that consumers are confused, and may even be misled, by the array of required forms. For nearly two decades, mortgage lenders and their trade associations have advocated a comprehensive overhaul of the mortgage disclosure process generally and joint RESPA -TILA reform in particular.

We believe that if the TILA and RESPA disclosures were made truly simpler and combined, or at least made harmonious and complementary – and if they and other essential information were provided to consumers in a coordinated manner at rational times in the process – consumers would be far better equipped to navigate the market, understand their mortgage and settlement costs, and shop intelligently to meet their financing needs.

We believe improving the transparency of the process is essential to true reform and needs to be the first stage of the reform process. The way should be cleared for stakeholders to channel their energies into this effort to facilitate its successful achievement.

Assuming that RESPA and TILA integration is accomplished, the next important step would be to simplify the many other disclosures, which add to the confusion, so that they too complement the RESPA and TILA disclosures and do not in any way detract from consumer understanding.

Separate Reform Efforts Paved with Good Intentions Have Yielded Suboptimal Results

A key purpose of DFA in establishing the new Bureau was to create a coordinated consumer protection effort by putting all consumer financial protection efforts in one place. Regrettably, the urgent need for coordination has been demonstrated all too well.

During the last few years, the Board and HUD, with the best of intentions, initiated separate efforts to improve disclosures under their respective laws that have resulted in new RESPA disclosures, additional TILA rules and several TILA proposals for reform. The results thus far have yielded complex, confusing and even conflicting requirements and very considerable costs.[1] Congress added to the confusion in 2008 by establishing new timing requirements for TILA disclosures, which differ from the timing of RESPA disclosures. These differences were exacerbated by additional timing requirements for redisclosure of the GFE under the new RESPA rule, and proposals pending in Congress are a concern.

In early 2008, HUD proposed its overhaul of the Good Faith Estimate (GFE) and HUD-1 Settlement Statement. It finalized the rule in November of 2008, and the regulations became effective January 1 of this year, with clarifying issuances that continue to this day. These new regulations establish substantive and procedural requirements that vary from those proposed by the Board. Untold implementation expenses have been and continue to be incurred by the lending industry.

[1] A recent example of overlapping and problematic TILA and RESPA requirements is the new Interim Final Regulation (MDIA) issued by the Board of Governors of the Federal Reserve System (Board). This rule will require disclosure of a new Interest Rate and Payment Summary form to show how an interest rate or payment amount may change. We agree disclosure of that information is important, but the new disclosure form repeats information that is already required to be disclosed on the GFE and HUD-1 under the new RESPA rule, but on a different form.

In the summer of 2009, after issuing rules to protect consumers from unfair, abusive, or deceptive lending and servicing practices, as well as accompanying changes to the Home Mortgage Disclosure Act (Regulation C), the Board separately proposed a complete overhaul of many of its TILA disclosures for closed-end and open-end transactions and required comments by December 24, 2009. Although provisions of the Board's proposal concerning loan officer compensation have been finalized, the disclosure provisions have not been finalized yet, making this an appropriate time to bring this effort into the RESPA-TILA integration process.

On September 24 of this year, the Board issued a second set of proposals of nearly 1,000 pages to further amend its TILA rules. These proposals, among other things, would revise disclosures for reverse mortgages, amend the rules for rescission of open-end and closed-end loans secured by consumers' principal dwellings, and add restrictions regarding unfair acts or practices.

Like the 2008 proposal, the Board's current proposal is requiring extensive review and an enormous investment of time by stakeholders to comment, diverting energy that would be better spent on RESPA-TILA integration. Although these proposals provide useful spadework that can help set the stage for future action, they may also be revised considerably as a result of the integration effort. ***Considering that comments are due December 23, and that to comment effectively the proposed changes must be considered in light of the RESPA-TILA proposals to come, a public announcement of postponement is warranted.*** The disclosure provisions could and should await the RESPA-TILA integration process.

Conclusion

In summary, we believe a comprehensive and orderly approach to mortgage reform is the only way to make certain that the RESPA-TILA integration process is successful. This will necessitate moving certain efforts of the Board and others to later in the process. Without a coordinated approach, we are concerned that piecemeal reform will continue until after the new Bureau takes over next summer.

We appreciate your consideration of this important issue and we look forward to assisting in the development of a coordinated plan to foster the reform effort in any way we can.

Thank you again for your efforts and your leadership.

With best regards,

American Bankers Association
American Financial Services Association
Community Mortgage Banking Project
Consumer Bankers Association
Consumer Mortgage Coalition
Housing Policy Council
Independent Community Bankers of America
Mortgage Bankers Association

Attachment A

Rule	Publication Date	Compliance Date
Interest Rate and Payment Summary, Interim Final Rule. This requires a new disclosure form that repeats, in a different format, information already disclosed in a GFE.	75 Fed. Reg. 58470 (Sept. 24, 2010)	January 30, 2011
Loan originator compensation. This rule revises the method for determining loan originator compensation.	75 Fed. Reg. 58509 (Sept. 24, 2010)	April 1, 2001
Final rule requiring notice to consumers when a loan is transferred.	75 Fed. Reg. 58489 (Sept. 24, 2010)	January 1, 2011
Comprehensive rule changes for closed-end loans. This proposal would require a number of new or revised disclosures.	75 Fed. Reg. 58539 (Sept. 24, 2010)	Proposal
This rule would implement a statutory requirement mandating escrows on certain jumbo loans.	75 Fed. Reg. 58505 (Sept. 24, 2010)	Proposal. Board expects a final rule shortly after the public comment period closes.
SAFE Act registration of mortgage loan originators.	75 Fed. Reg. 44656 (July 28, 2010)	October 1, 2010. Registration within 180 days of Registry accepting registrations.
CRA definition of community development.	75 Fed. Reg. 36016 (June 24, 2010)	Proposal
Risk-based pricing notices.	75 Fed. Reg. 2724 (January 15, 2010)	January 1, 2011
Consumer financial privacy notice	74 Fed. Reg. 62890 (December 1, 2009)	Primarily December 31, 2009
Interim final rule requiring notice to consumers when a loan is transferred.	74 Fed. Reg. 60143 (November 20, 2009)	January 19, 2010
TILA – closed end, proposing major changes and several new disclosures.	74 Fed. Reg. 43232 (August 26, 2009)	Proposal
TILA – open end, proposing major changes and several new disclosures.	74 Fed. Reg. 43428 (August 26, 2009)	Proposal
Release of RESPA FAQs began	Released piecemeal	Largely January 1,

	between August 13, 2009 and April 2, 2010	2010
Information furnished to consumer reporting agencies	74 Fed. Reg. 31484 (July 1, 2009)	July 1, 2010
Information furnished to consumer reporting agencies	74 Fed. Reg. 31529 (July 1, 2009)	ANPR
CRA rules	74 Fed. Reg. 31209 (June 30, 2009)	Proposal
SAFE Act registration	74 Fed. Reg. 27386 (June 9, 2010)	Proposal
TILA / MDIA rules on, in part, timing of disclosures and mandatory waiting periods.	May 19, 2009	July 30, 2009
Affiliate marketing and ID theft red flags	May 14, 2009	May 14, 2009 and January 1, 2010
TILA-MDIA	73 Fed. Reg. 74989 (December 10, 2008)	Proposal
Major RESPA rules	73 Fed. Reg. 68204 (November 17, 2008)	Mostly January 1, 2010
HMDA rate spread reporting	73 Fed. Reg. 63329 (October 24, 2008)	October 1, 2009
Major TILA / HOEPA rules	73 Fed. Reg. 44522 (July 30, 2008)	October 1, 2009 (April 1, 2010 for § 226.35(b)(3))
HMDA, conforming to higher-priced loan definition	73 Fed. Reg. 44189 (July 30, 2008)	Proposal
Risk-based pricing	73 Fed. Reg. 28966 (May 19, 2008)	Proposal
Higher-priced mortgage loans	73 Fed. Reg. 1672 (January 9, 2008)	Proposal
Mortgage assistance relief services	75 Fed. Reg. 10707 (March 1, 2010)	Proposal
Mortgage advertising	75 Fed. Reg. 60352 (Sept. 30, 2010)	Proposal

Mortgage assistance relief services	74 Fed. Reg. 26130 (June 1, 2009)	ANPR
Mortgage advertising, origination, appraisals and servicing.	74 Fed. Reg. 26118 (June 1, 2009)	ANPR